

**UNITED STATES BANKRUPTCY COURT**  
**Eastern District of California**

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**September 24, 2020 at 10:30 a.m.**

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1.	<a href="#"><u>17-20220-E-7</u></a> <a href="#"><u>DNL-4</u></a>	WILLIAM/FAYE THOMAS Kristy Hernandez	MOTION TO SELL 8-20-20 <a href="#"><u>[237]</u></a>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on August 20, 2020. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Motion to Sell Property is granted.</b></p>
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The Bankruptcy Code permits Hank Spacone, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the personal property commonly known as Debtor's scheduled assets:

1. Debtor's interest in retirement and pension accounts and life insurance (collectively "Retirement Accounts"), the present aggregate value of which is approximately \$608,000.00.

2. Cash and money deposits with a scheduled value totaling \$15,951.00, vehicles with a scheduled value totaling \$25,035.00, and personal and household items with a scheduled value totaling \$5,165.00, for a cumulative total of \$46,151.00.
3. Debtors' interest in El Dorado County Superior Court Case No. PC20120541 entitled *Affiliated Professional Services, Inc. v. Glen Van Dyke et al.* ("State Court Litigation").

("Property").

The proposed purchaser of the Property is William Carter Thomas, Jr. and Faye Wales Thomas ("Debtor") and the terms of the sale are:

- A. The purchase price is \$40,000.00.
- B. Buyer to provide a deposit of \$5,000.
- C. Buyer shall pay \$35,000.00 within seven calendar days of entry of the Bankruptcy Court's order approving this agreement.
- D. Agreement is subject to the court's approval and overbidding at a duly noticed hearing.
- E. Each party shall bear its own attorney's fees and costs. If, there is litigation to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover from the defaulting party his/her reasonable attorney fees and costs incurred in connection with the litigation.

### **Proposed Overbidding Procedures**

1. Prior to the hearing on this motion, a proposed overbidder, must provide the Trustee with a cashier's check in the amount of \$80,000.00 (\$40,000.00 sales price + \$36,351.90 to account for Debtors' claimed exemptions + 1st overbid in the amount of \$3,648.10), and proof of funds of an additional \$20,000.00.
2. Overbidding to proceed in increments of at least \$3,000.00.

### **DISCUSSION**

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because with the exception of the Retirement Accounts, all scheduled assets of the bankruptcy estate are either fully encumbered or agreed to be fully exempted. Moreover, creditors

will benefit from the sale proceeds.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because Trustee would like to move forward immediately upon entry of the court's order approving the sale.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Hank Spacone, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Hank Spacone, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to William Carter Thomas, Jr. and Faye Wales Thomas or nominee ("Buyer"), the Property as described and listed above ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$40,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 242, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee and Office of the United States Trustee on June 23, 2020. By the court's calculation, 30 days' notice was provided. The court set the hearing for July 23, 2020. Dckt. 36.

The Motion to Convert Case from Chapter 7 to Chapter 13 was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

**The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is XXXXX.**

Antranick Harrentsian ("Debtor") seeks to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

Debtor asserts that the case should be converted because this case has not been previously converted under § 1112 or § 1307.

Here, Debtor's case has not been converted previously, and Debtor qualifies for relief under Chapter 13. Notice was provided to the Chapter 7 Trustee, Office of the United States Trustee, and other interested parties. No opposition has been filed.

Pursuant to this court's July 8, 2020 Order (Dckt. 36), the instant Motion was set for hearing on the grounds that the court cannot identify what basis exists for Debtor being able to prosecute a Chapter 13 case.

The Chapter 7 Trustee filed her Opposition on July 16, 2020. Dckt. 45. In it, the Trustee identifies the following assets the Trustee is intending to administer:

- A. The real property identified as 8065 Dorian Way, Fair Oaks, California, which the Debtor states has a value of \$340,000, is subject to the secured claim of Wells Fargo Mortgage in the amount of (\$142,266), and in which Debtor has claimed a homestead exemption of (\$100,000). After taking into account the secured claim and the exemption, there is approximately \$100,000 of equity for the Estate (which the Trustee believes will actually be higher).
- B. The bankruptcy estate includes a judgment in the amount of \$838,578.03 against Sarah Correa (which Debtor did not disclosed on Schedule A/B). The Debtor has been obtaining payments on this obligation via a wage garnishment, which the Trustee projects will continue.

In her Declaration, the Trustee testifies that the Debtor has not cooperated with the Trustee to have access to the real property for Trustee's real estate professional. Dckt. 47. Filed as Exhibit D is a copy of an Interim Return from the Ada County Sheriff's Office for recoveries on the wage garnishment, which shows that so far \$65,227.47 has been recovered by the Sheriff's office on the judgment. Dckt. 46 at 15.

Further, the Chapter 7 Trustee indicates that there are nonexempt assets to be administered in the bankruptcy estate. *Id.* After a review of Schedules A/B, the court cannot identify any assets disclosed by Debtor in which there is non-exempt equity.

Taking Debtor's statements of financial information under penalty of perjury as accurate, Debtor has little income with which to fund a Chapter 13 Plan. Schedule I lists Debtor having only \$1,220 a month in Social Security income, is receiving \$194 in Cal Fresh Benefits, and \$840.00 from the wage garnishment (but no judgment asset listed on Schedule A/B). Dckt. 1 at 30-31.

On Schedule J Debtor lists having \$2,120 a month in expenses, which includes \$1,400 for a mortgage payment. *Id.* at 33-34. Schedule J includes the note that the monthly mortgage payment is anticipated to increase. *Id.* at 34. Debtor's expenses listed on Schedule J do not appear reasonable for a family of two persons (Debtor and a minor child). Questionable amounts include: (1) \$0.00 for home maintenance and repairs; (2) \$70.00 for food for the two people; (3) \$0.00 for medical and dental expenses; and (4) \$150.00 for transportation (gas, repairs, maintenance, and registration for Debtor's 18 year old Mercedes Benz).

On Schedule E/F, Debtor lists having unsecured debts of only \$2,454. The only secured claim listed is that of Wells Fargo Mortgage in the amount of \$142,266.

At the hearing, Debtor discussed the filing of this case to stop the foreclosure on his home, in which there appears to be at least \$100,000 of non-exempt equity. Debtor reports he has pursued non-bankruptcy resolution with the mortgage for the short-term forbearance on payments and is working with

family member to obtain a refinance of the property. Debtor has less than \$2,500 of other debt.

The Chapter 7 Trustee reported that she was likely to merely collect the payments on the wage garnishment being paid on the judgment that is property of the bankruptcy estate, use that to pay the small amount of unsecured claims and administrative expenses, and conclude the case. In light of the substantial equity in the real property and very, very small unsecured debt, the Trustee is not contemplating pushing a sale of the real property.

### **Trustee's 341 Meeting Report**

On August 13, 2020, Trustee filed the report indicating that the meeting was adjourned and that Debtor did not appear. The Meeting of Creditors has been continued to October 2, 2020 at 3:30 p.m.

### **September 24, 2020 Hearing**

At the hearing, **XXXXX**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Convert filed by Antranick Harrentsian ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is **XXXXX**.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 3, 2020. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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<p><b>The Motion for Approval of Compromise is granted.</b></p>
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Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with ESBF California, LLC ("Settlor"). The claims and disputes to be resolved by the proposed settlement is the Adversary Proceeding 19-02115 where Trustee seeks to avoid and recover transfers and disallow claims related to an agreement between ESBF and the Debtor in which \$284,000.00 of the Debtor's future receivables were sold to ESBF for the sum of \$200,000.00. Dckt. 625.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 629):

- A. ESBF will pay to the Trustee the sum of \$25,000.00 in monthly payments of \$5,000.00.
- B. The Settlement Agreement is subject to the approval of the Bankruptcy Court.
- C. Once the settlement agreement is approved by the court and following expiration of the appeal period for the order, ESBF waives all claims against the Debtor and the Estate or its assets, including any claim based on Section 502 of the Bankruptcy Code arising from the settlement payment, and shall not share in any distribution as a creditor of the Estate.
- D. The Trustee will dismiss the adversary proceeding upon the later of the following: 1) within five (5) business days following expiration of the appeal period on the Approval Order, with no timely appeal having been taken; or, 2) within five (5) business days of the receipt of the full Payment, and the withdrawal of the Claims.
- E. Parties have exchanged general mutual releases of any and all claims related to the Action.
- F. In the event of a default under the terms of the Agreement, ESBF has thirty days from transmission of the written notice of default to cure the default.

According to Trustee, the Motion is to be also considered as a Motion to Sell the claims, and subject to overbidding. If Settlor is outbid at the hearing, the Settlement Agreement shall be null and void in its entirety.

## **DISCUSSION**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

- 1. The probability of success in the litigation;
- 2. Any difficulties expected in collection;
- 3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
- 4. The paramount interest of the creditors and a proper deference to their reasonable views.



*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

### **Probability of Success**

Although Movant is confident in her litigating position, ESBF's pending Motion to Dismiss presents a legally complex and fact-intensive issue of whether the Agreement constituted a true sale of the Debtor's receivables.

Furthermore, ESBF contends that the transfers at issue were made in the ordinary course of business. Although Movant believes that the validity of the agreement provides a potential counter argument (based on the lack of authorization of a third party to sign on behalf of Debtor), litigation inherently presents risk of loss, especially with issues of legal and factual complexity.

### **Difficulties in Collection**

Movant asserts that this factor favors settlement. Trustee asserts that ESBF is a defunct entity and that the Cash Advance industry is under pressure due to COVID-19's impacts on the economy and due to regulatory pressure. Thus, if the Estate were to obtain a judgment, collection may be challenging.

### **Expense, Inconvenience, and Delay of Continued Litigation**

Without the settlement, the bankruptcy estate would be incurring additional legal fees by litigating ESBF's Motion to Dismiss. Movant contends the settlement avoids expense, uncertainty, and delay.

### **Paramount Interest of Creditors**

Movant argues that as a result of the settlement, the Estate will recover \$25,000.00 and ESBF will not assert a lien on Estate assets or share in any distributions from this Estate.

### **Consideration of Additional Offers**

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because of the probability of success and difficulties in the matter of collection and in light of the maximum recovery for the Estate. The Motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the

hearing.

The Motion to Approve Compromise filed by Kimberly J. Husted, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Approval of Compromise between Movant and ESBF California, LLC (“Settlor”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 629).

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 21, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Withdraw Proof of Claim No. 7 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p><b>The Motion to Withdraw Proof of Claim is <span style="color: red;">XXXXX</span>.</b></p>
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Creditor iKahn Capital LLC ("Creditor"), seeks dismissal of its Proof of Claim on the grounds that Movant has no reasonable expectation that it will recover any sums owed and does not wish to incur attorney fees.

#### **Review of the Motion**

- A. Creditor filed Proof of Claim Number 7 on November 7, 2017 in the amount of \$145, 214.87.
- B. Kimberly J Husted, the Chapter 7 Trustee, filed a complaint against Creditor and non-creditor Global Merchant Cash, Inc. (Case No. 19-2112) regarding Creditor's claim. Other than the adversary proceeding, no offsets have been asserted against Creditor's claim.

- C. Creditor has not received a dividend nor has Creditor actively participated in Debtor's bankruptcy matter.

## **Proof of Claim**

Creditor filed Proof of Claim Number 7 on November 7, 2017. The Claim is asserted to be unsecured in the amount of \$145,214.87. Proof of Claim, No. 7. The Claim is based on the sum of \$115,870.00, plus interest at 16% from the date of default on September 5, 2017 in the amount of \$152.37, costs in the amount of \$225.00, and confessed attorney's fees in the amount of \$28,967.50. *Id.*

## **DISCUSSION**

The Federal Rules of Bankruptcy Procedure allow a Creditor to withdraw a claim after notice.

A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If after a creditor has filed a proof of claim an objection is filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession, and any creditors' committee elected pursuant to §705(a) or appointed pursuant to §1102 of the Code. The order of the court shall contain such terms and conditions as the court deems proper. Unless the court orders otherwise, an authorized withdrawal of a claim shall constitute withdrawal of any related acceptance or rejection of a plan.

Fed. R. Bankr. R. 3006.

At the hearing, **XXXXXXXXXX**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Withdraw Proof of Claim Number 7 filed in this case by Creditor iKahn Capital LLC ("Creditor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Withdraw Proof of Claim Number 7 of Creditor is **XXXXXX**.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on August 20, 2020. By the court’s calculation, 35 days’ notice was provided. 14 days’ notice is required.

The Stipulation to Abandon has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**No Relief is Ordered Pursuant to the “Stipulation to Abandon Certain Assets.”**

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

### **Review of the Stipulation**

The Stipulation filed by Sheri L. Carello (“the Chapter 7 Trustee”) and Joseph H. Akins (“Debtor”) requests that the court authorize her to abandon property commonly known as cars, trucks, and boats as listed in Debtor’s schedules (“Property”).

No motion requesting relief, as required by Federal Rule of Bankruptcy Procedure 9013, has been filed with the court.

### **Creditor’s Opposition**

Creditor Dominique Black filed an Opposition to the Stipulation on September 3, 2020. Dckt. 58. Creditor objects to the abandonment on the basis that the Stipulation to Abandon is signed by the deceased debtor’s Counsel; it is vague as to the assets being abandoned; and the Creditor is unable to

determine who is making litigation decisions for the Debtor since Debtor is deceased.

## **DISCUSSION**

### Pleadings Filed as One Document

Stipulating Deceased Debtor, after his death, filed the Notice and Stipulation in this matter as one document. That is not the practice in the Bankruptcy Court. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

### The Stipulation

No detailed list of the property to be abandoned was provided to the court with this Stipulation. The court is reluctant to assume that the 2005 GMC Pickup, 2000 Buick, 1990 GMC pickup, 1966 Chevy Pickup, and 1974 Microcraft are the assets stipulated to be abandoned.

Additionally, at the time counsel signed the “Stipulation,” she did not have a live client to represent.

The court finds it concerning that a Chapter 7 Trustee would: (1) sign an agreement giving away “certain personal property cars, truck and boats,” not even tying it to what is stated on the Schedules, and (2) the Trustee is signing stipulations with an attorney who did not at the time have a living client to represent in the bankruptcy case.

The Trustee can identify the property she is abandoning and a motion to compel the abandonment can be filed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Stipulation to Abandon Property filed by Sheri L. Carello (“the Chapter 7 Trustee”) and Joseph H. Akins (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that no relief is granted pursuant to the Stipulation to Abandon.

6. [20-20507-E-7](#) SONIC EXPRESS, LLC MOTION FOR PROTECTIVE ORDER  
[HLG-1](#) Gary Zilaff 8-20-20 [38]

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 21, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Protective Order has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion for Protective Order is <span style="color: red;">XXXXX</span>.</b>
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Inderbir Singh, owner and former principal of Sonic Express LLC ("Debtor") and Gurtej Gill, Rapid Trucking, Rapid Logistics, LLC, and Essar Logistics, LLC ("Interested Parties") requests the court for a protective order directing Alan S. Fukushima, the Chapter 7 Trustee ("Trustee"), not to produce any books, records, books of account, or otherwise financial records of the Defendant-Debtor products of the Debtor's Rule 2004 Examination to Nanak Bhatti ("Creditor").

### Review of the Motion

In support of their request, Movant states the following grounds:

- A. The Trustee obtained documents from Defendant-Debtor through a Rule 2004 examination, at the prompting of the Creditor. The Creditor filed two proofs of claims and is the plaintiff in two separate pending state court cases: (1) a wage and hour case currently on appeal and (2) a

business dispute case where discovery has already concluded.

Further, that Creditor seeks to obtain documents that the Chapter 7 Trustee has received through the Rule 2004 examination for Creditor's use outside of this bankruptcy case.

- B. Movants assert that: (1) Creditor is attempting to utilize the bankruptcy process to circumvent a state court order prohibiting Creditor from conducting further discovery in the business dispute case; and (2) Creditor is attempting to conduct discovery on claims against the Interested Parties.
- C. On March 23, 2017, the Creditor filed a lawsuit against Defendant-Debtor alleging eight causes of action for California wage and hour violations and one cause of action for liquidated damages. The State Court awarded damages to the Creditor in the amount of \$157,248.34 and determined that Mr. Singh is personally liable for the debts of Defendant-Debtor. This case is currently pending on appeal.
- D. On March 29, 2017, the Creditor filed a lawsuit against Gurtej Gill, Defendant-Debtor, and over twenty other defendants alleging that defendants stole Sonic Freight from Creditor. Creditor alleged that he has been the 100% shareholder and owner of Sonic Freight and between September of 2014 through March of 2017, Creditor ran Sonic Freight as a trucking company.
- E. Discovery closed prior to September of 2019 and after discovery closed, Creditor attempted to re-open discovery to obtain financial records of Defendant-Debtor. The State Court prohibited Creditor from conducting further discovery and sanctioned the Creditor.
- F. On January 30, 2020 Defendant-Debtor filed for bankruptcy and Creditor filed two proofs of claim: (1) Proof of Claim Number 1 for \$425,379.00 based on the Wage and Hour Judgment and (2) Proof of Claim Number 3 for \$16,800,000.00 based on the pending business dispute case.
- G. Federal Rule of Bankruptcy Procedure 2004(a) provides that "on motion of any party in interest, the court may order the examination of any entity." Fed. R. Bankr. P. 2004(a). "The examination...may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate..." Fed. R. Bankr. P. 2004(b).
- H. Under the "pending proceeding" rule, "once an adversary proceeding or contested matter has been commenced, discovery is made pursuant to Federal Rule of Bankruptcy Procedure 7026 et seq., rather than by a [Rule] 2004 examination." *In re Washington Mutual, Inc.*, 408 B.R. 45, 50 (Bankr. D. Del. 2009). The filing of a proof of claim in the



bankruptcy case is synonymous with the filing of an adversary proceeding complaint. *See* Fed. R. Bankr. P. 9014(a) and (c). As a result, the filing of a proof of claim is a contested matter. *Id.*

- I. “The reason for the [pending proceeding] rule is to avoid Rule 2004 usurping the narrower rules for discovery that are provided for in a pending adversary proceeding.” *In re Int’l Fibercom, Inc.*, 283 B.R. 290, 292 (Bankr. D. Ariz. 2002).
- J. Creditor is seeking the documents from the Trustee and thus is attempting to utilize Rule 2004 to circumvent the discovery rules provided for in the pending state court business case and to obtain discovery on claims against Interested Parties.
- K. Disclosure of the Rule 2004 documents would violate Trustee’s fiduciary duty to creditors and might undermine the bankruptcy estate’s ability to assert defenses and protect assets.
- L. The court should give full faith and credit to the state court’s order prohibiting Creditor from any further discovery in the state court action.

#### **OPPOSITION OF CREDITOR NANAK SINGH BHATTI**

Creditor Nanak Singh Bhatti (“Bhatti”) has filed an Opposition, stating that the reason that Bhatti seeks the documents is to have the trustee “keep creditors informed” concerning the administration of the bankruptcy estate. Opposition, p. 5:7-8; Dckt. 96. Bhatti seeks these to consider whether there are inconsistencies in the financial information provided by Debtor in the Schedules and Statement of Financial Affairs.

Bhatti is strong on arguing that the Trustee has a “duty” to deliver the documents from the 2004 examination to Bhatti pursuant to 11 U.S.C. § 704(a)(7). That section provides:

§ 704. Duties of trustee

(a) The trustee shall—

...

(7) unless the court orders otherwise, furnish such information concerning the estate and the estate’s administration as is requested by a party in interest;

11 U.S.C. § 704(a)(7).

#### **REPLY BY INDERBIR SINGH**

In a fourteen page reply to the twenty page opposition filed by Bhatti, Singh provides the court with a detailed history of the running dispute between Ghatti and Singh, addressing various contentions and counter-contentions.

## DISCUSSION

The parties have been overly detailed in discussing their disputes, the improper conduct of their opponent, and their grounds for and against this particular protective order. Bhatti is seeking to obtain documents from the Chapter 7 Trustee, which the Chapter 7 Trustee obtained from the Debtor. In substance, Singh asserts that the Chapter 7 Trustee is the simpleton (the court's pejorative term) Trojan Horse for Bhatti, the simpleton (again, the court's pejorative term) being used as a pawn for conducting extra-judicial discovery in violation of the state court judge's orders in the state court action between the two of them.

Bhatti responds that he is only seeking to protect his interests in this bankruptcy case, as well as to check up on and oversee the simpleton (court's pejorative term) Chapter 7 Trustee and Trustee's counsel who may not understand the documents they have obtained in the 2004 examination of the Debtor. These appear to be the books and records of the Debtor. Bhatti states that he also needs these documents to consider whether he wants to purchase the estate's claims against Singh so that Bhatti can expand his litigation against Singh to federal court.

There may be valid reasons for the Chapter 7 Trustee to provide documents of the estate to Bhatti. But it is not as simple in light of the ongoing, apparently endless litigation between Bhatti and Singh. Possibly, if the court were to allow the discovery, the order would allow the documents to be used only in the bankruptcy court, and if such document were presented in any other court or non-bankruptcy proceeding, Bhatti, his counsel, and representatives would be held in contempt, with the imposition of a stiff corrective sanction of a pre-set amount ordered paid and then a trip up to the Article III floor of the Courthouse for a consideration of what, if any, punitive sanctions should be ordered.

At the hearing, the court discussed with the parties the very detailed, complex contentions and counter-contentions presented **XXXXXXXXXX**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Protective Order by Inderbir Singh, owner and former principal of Sonic Express LLC ("Defendant-Debtor") and Gurtej Gill, Rapid Trucking, Rapid Logistics, LLC, and Essar Logistics, LLC ("Interested Parties") ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is **XXXXX**.

# FINAL RULINGS

7. [19-26175-E-11](#) **ALMA CHAVEZ-NUNEZ** **MOTION TO CONVERT CASE FROM**  
[UST-1](#) **John Downing** **CHAPTER 11 TO CHAPTER 7,**  
**MOTION TO DISMISS CASE**  
**8-15-20 [57]**

**Final Ruling:** No appearance at the September 24, 2020 hearing is required.

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Local Rule 9014-1(f)(1) Motion– Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, creditors holding the twenty largest unsecured claims, creditors, and parties requesting special notice on August 17, 2020. By the court’s calculation, 38 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days’ notice for written opposition).

The Motion to Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The hearing on the Motion to Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is continued to 10:30 a.m. on October 15, 2020.**

## JOINT STIPULATION

On September 21, 2020 the Parties filed a Joint Stipulation requesting the court continue the U. S. Trustee’s Motion to October 15, 2020 at 10:30 a.m.

## Review of the Motion

This Motion to Convert the Chapter 11 bankruptcy case of Alma Angelina Chavez-Nunez

(“Debtor”) has been filed by Tracy Hope Davis (“U.S. Trustee”), the U.S. Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. The instant case is the Debtor’s fifth bankruptcy case since 2012.
- B. The Debtor cannot comply with the Plan. Debtor has failed to file a Plan. Debtor would have to make monthly plan payments in the amount of \$27,000.00 for 60 months in order to address the filed priority tax claims which exceed \$1.6 million.
- C. Cause to dismiss also exists under 11 U.S.C. § 1112(b)(4)(F): The Debtor has failed to timely file the monthly operating reports for month January 2020 thru June 2020. Debtor has also failed to file the periodic report required for Tahoe Maintenance, Inc, a sole proprietorship owned by Debtor, which is not listed in Debtor’s schedules.
- D. Cause to dismiss also exists under 11 U.S.C. § 1112(b)(4)(K): The Debtor owes \$2,286.39 in quarterly fees to the United States Trustee.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Convert the Chapter 11 case filed by Tracy Hope Davis (“the U.S. Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion to Convert is continued to **10:30 a.m. on October 15, 2020.**

**Final Ruling:** No appearance at the September 24, 2020 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 4, 2020. By the court’s calculation, 51 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Allowance of Professional Fees is granted.**

Gabrielson & Company, the Accountant (“Applicant”) for Kimberly J. Husted, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 30, 2020, through June 29, 2020. The order of the court approving employment of Applicant was entered on June 26, 2020. Dckt. 59. Applicant requests fees in the amount of \$2,054.00 and costs in the amount of \$140.99.

## **APPLICABLE LAW**

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional’s services, the manner in which services were performed, and the

results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the professional exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Lodestar Analysis**

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by a professional are “actual,” meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a professional to work in a bankruptcy case does not give that professional “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include preparing federal and California Estate Income Tax returns for the separate taxable estates of William Joseph Fernandez and Ellen Jean Fernandez. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Federal and California Estate Income Tax Returns: Applicant spent 3.8 hours in this category. Applicant prepared the federal and California estate income tax returns for the separate taxable estates of William Joseph Fernandez and Ellen Jean Fernandez.

General Administration: Applicant spent 1.4 hours in this category. Applicant prepared the accountant declaration and related employment documents; and prepared the first and final fee application for the tax services.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Michael Gabrielson	5.2	\$395.00	\$2,054.00
	0	\$0.00	<u>\$0.00</u>
<b>Total Fees for Period of Application</b>			\$2,054.00

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$140.99 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	\$0.20	\$93.40
Postage		\$47.59
		\$0.00
<b>Total Costs Requested in Application</b>		<b>\$140.99</b>

In looking at the costs, Applicant states that they charge clients \$0.20 a page for photocopies. Commonly, a cost of \$0.10 per page is allowed. Applicant has not provided the court with evidence that his actual cost of photocopies is \$0.20 a page in 2020.

The court reduces the photocopy charge to \$0.10 a page, thus reducing costs to \$46.70. This is without prejudice to Applicant documenting that the actual cost is more than \$0.10 a page and that such higher amount is reasonable.<sup>FN. 1</sup>

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FN. 1. The court recalls a case from a few years back where the attorney asserted that the \$0.25 a page copy fee was the actual cost he paid a third party to generate the copies. The third-party was the attorney's wife, who would come into the attorney's office, use the attorney's copy machine and paper, and then "bill" the attorney 40.25 a page for her time and effort in operating the copy machine. Not surprisingly, that \$0.25 a page expense was not approved. Though the court has no belief that such is the situation with the current applicant, the rules regarding fees are applied across the board to all applicants.  
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## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$2,054.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

### **Costs & Expenses**

First and Final Costs in the amount of \$94.29 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$2,054.00
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Costs and Expenses                      \$94.29

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Gabrielson & Company (“Applicant”), Accountant for Kimberly J. Husted, the Chapter 7 Trustee (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:

Gabrielson & Company, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$2,054.00

Expenses in the amount of \$94.29,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

**Final Ruling: No appearance at the September 24, 2020 Hearing is required.**

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Local Rule 9014-1(f)(3) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on August 31, 2020. By the court’s calculation, 24 days’ notice was provided. The court set the hearing for September 24, 2020. Dckt. 134.

The Motion to Employ BPM LLP as a financial advisor was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3).

<p><b>The Motion to Employ is granted.</b></p>
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Russell Wayne Lester (“Debtor in Possession”) seeks to employ BPM LLP (“Financial Advisor”) pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Financial Advisor to advise the Debtor in Possession in the course of its Bankruptcy case.

Debtor in Possession argues that Financial Advisor’s appointment and retention is necessary to assist Debtor in Possession with various bankruptcy reporting and accounting issues, and to prepare financial information to be included with the Debtor in Possession’s first day motions, schedules, and statement of financial affairs. The court summarizes the terms of employment as follows (the full terms are stated in the Agreement, Exhibit A, Dckt. 70):

- A. BPM LLP shall provide financial advisory and cash management services.
- B. The fees of BPM are based on an hourly rate, including Russell Burbank at \$550.00 per hour.
- C. BPM shall receive a \$25,000.00 retainer.
- D. Any dispute, controversy, or claim that arises in connection with the performance or breach of the agreement that cannot be resolved through facilitated negotiations will be submitted to arbitration.

Russell Burbank, a Senior Managing Director of BPM LLP, testifies that he currently acts as financial advisor to Russell Wayne Lester, and the representation of Debtor in Possession poses no

conflict with BPM LLP. Russell Burbank testifies that he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Financial Advisor, considering the declaration demonstrating that Financial Advisor does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ BPM LLP as Financial Advisor for the Chapter 11 Estate on the terms and conditions set forth in the Agreement filed as Exhibit A, Dckt. 70. Approval of the hourly based compensation is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by Russell Wayne Lester ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ is granted, and Debtor in Possession is authorized to employ BPM LLP as Financial Advisor for Debtor in Possession on the terms and conditions as set forth in the Engagement Agreement filed as Exhibit A, Dckt. 70.

**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

**IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by Financial Advisor in connection with this matter,

regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

**IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.